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January 7, 2022

Via ECF

Honorable Lorna G. Schofield
United States District Judge
U.S. District Court, Southern District of New York
Thurgood Marshall Courthouse
40 Foley Square
New York, NY 10007

Re: *Rosario v. City of New York, et al.*, Case No. 18-cv-4023

Dear Judge Schofield,

Pursuant to the Court's order at Docket No. 358, the parties write regarding their availability for trial later this month or during the second quarter of 2022.

The parties are both available to move forward later this month as well as during the month of February, and would prefer to move forward as quickly as possible. Plaintiff notes that one of his experts, Dr. Shawn Agharkar, is not available until February 7; Plaintiff will respectfully request the Court's permission to call Dr. Agharkar out-of-turn if necessary to ensure that trial can proceed on the earliest available date.¹ Plaintiff also notes that once a date is set, counsel will need to reach out to fact witnesses to ensure their availability.

The individual defendants themselves are available, as well as counsel, and defendants believe that their witnesses should be available in this period depending on when the trial is scheduled. Defendants also believe that plaintiff should make efforts to determine the availability of witnesses, prior to the selection of a new trial date, to avoid a trial with countless "unavailable" witnesses

With regard to Dr. Agharkar, defendants will not be able to determine if they will call their doctors until after Dr. Agharkar testifies and plaintiff rests. If this matter proceeds to trial the week of January 24, 2021, plaintiff's case would be complete well in advance of February 7, 2022. In that event, defendants would object to delaying or keeping the jury solely to allow for this witness to testify.²

¹ One of the attorneys for the defense, Brachah Goykadosh, is beginning a clerkship on February 14, 2022. Therefore, the last day Ms. Goykadosh can participate in the litigation of this matter is February 11, 2022. To the extent this trial can begin early during the week of January 24, 2022, that would allow Ms. Goykadosh to perhaps fully participate in this trial.

² Plaintiff's counsel will continue to work with Dr. Agharkar regarding scheduling and believe this issue should not be determinative.

The parties' availability during the second quarter of 2022 is as follows:

Plaintiff's Availability During the Second Quarter

Plaintiff's counsel has federal civil rights trials in other matters scheduled in early April and early July. Plaintiff can be available for trial between April 18 and June 30.

Defendants' Availability During the Second Quarter

Defense counsel is assigned to trials in the Southern and Eastern Districts of New York scheduled to begin March 14, April 4, April 26, June 21, 2022 and August 29, 2022,³ and will be unavailable during those times. Defendants also note that the Passover holiday occurs between April 15 and 23, 2022, which may affect the availability of counsel and witnesses.

The parties thank the Court for its time and attention to this matter.

Respectfully submitted,

/s/ Emma Freudenberger
Emma Freudenberger

Counsel for Plaintiff

³ Defense counsel anticipates each of these trials will take approximately one week.